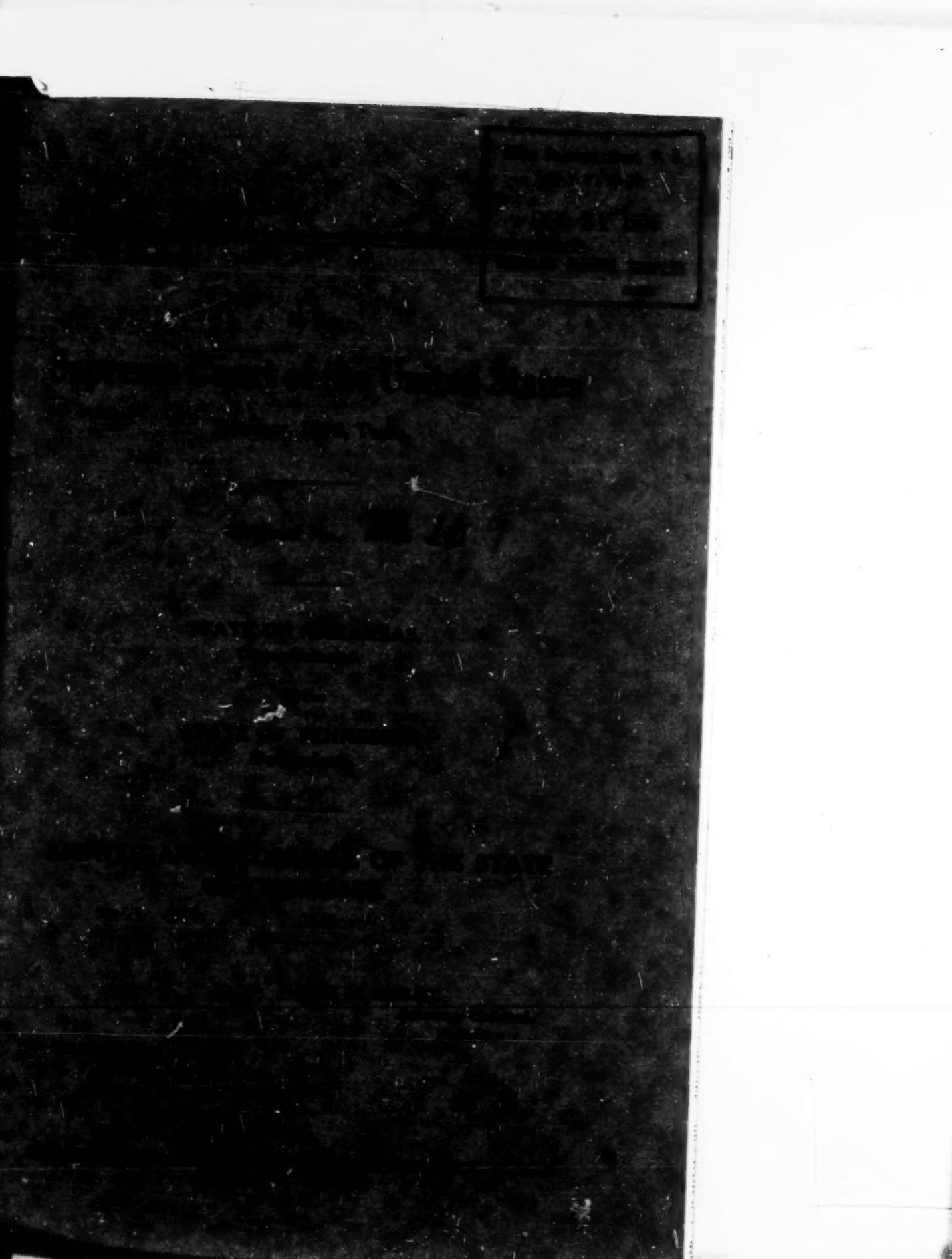


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In the
Supreme Court of the United States

October, 1935, Term.

Original No.

STATE OF ARKANSAS,
Complainant.

Versus

STATE OF TENNESSEE,
Defendant.

**ANSWER AND CROSS-BILL OF THE STATE
OF TENNESSEE.**

The defendant, State of Tennessee, for answer to the bill of complaint of the State of Arkansas filed against it in this cause and Court, says:

Answering Count 1 of the bill of complaint the defendant, the State of Tennessee, says:

It admits that the territory described in Count 1 at one time lay west of the main channel of the Mississippi River. It admits that in 1821 or in 1822 an avulsion occurred which had the effect of creating an island out of the territory in question. This is-

land has been known at various times as Denham's Island, Needham's Island, Cutoff Island, and is now known locally as Moss Island. It avers that prior to the year 1828 the former channel of the Mississippi River which ran north, east and south of the territory in question had become virtually useless and unfit for navigation and that from the year 1828 onward and up to the present time the thread of navigation or main channel of the Mississippi River has always been west of the land in question.

It avers that the Congress of the United States on June 10, 1836, passed an Act admitting the State of Arkansas into the Union as of July 4, 1836, and among the relevant portions of said Act is to be found the following language:

" . . . the said State shall consist of all the territory included within the following boundaries, to-wit: beginning in the middle of the main channel of the Mississippi river, on the parallel of thirty-six degrees north latitude, running from thence west, with the said parallel of latitude, to the Saint Francis river, thence up the middle of the main channel of said river to the parallel of thirty-six degrees thirty minutes north; from thence west to the southwest corner of the State of Missouri; and from thence to be bounded on the west, to the north bank of Red River, by the lines described in the first article of the treaty between the United States and the Cherokee nation of Indians west of the

Mississippi, made and concluded at the city of Washington, on the 26th day of May, in the year of our Lord one thousand eight hundred and twenty-eight; and to be bounded on the south side of Red River by the Mexican boundary line, to the northwest corner of the State of Louisiana; thence east, with the Louisiana State line, to the middle of the main channel of the Mississippi river; thence up the middle of the main channel of the said river, to the thirty-sixth degree of north latitude, the point of beginning." (Italics ours.)

It avers that the effect of the language above quoted was to confine the jurisdiction of the State of Arkansas to the territories embraced within the above-described boundaries and that inasmuch as on both June 10, 1836, and July 4, 1836, the main channel of the Mississippi River then flowed west of the territory in question, the State of Arkansas did not acquire jurisdiction, dominion and control of the lands described in Count 1 of plaintiff's bill because they lay without the boundaries of said State.

Further answering the State of Tennessee avers that immediately after the avulsion above mentioned, the State of Tennessee began to exercise jurisdiction over the lands in controversy and that entries and surveys thereof were made under the authority of this State and that grants therefor were issued by the State of Tennessee and jurisdiction assumed thereover in many other ways.

In 1872 at its April Term, the Supreme Court of the State of Tennessee was confronted with the legal question as to whether or not the territory in question was a part of Tennessee or a part of Arkansas and after a consideration of matters, the Supreme Court of Tennessee held, in an opinion for publication, in the case of *Moss v. Gibbs*, reported in 57 Tenn., 283, the land in question to be a part of the State of Tennessee. The State of Tennessee avers that this opinion as above stated was for publication and charged the complainant, the State of Arkansas, with notice that this defendant was claiming title to the land in controversy. It further avers that the State of Tennessee for more than one hundred years has exercised jurisdiction over said land, that it has assessed the same for taxation and collected taxes thereon, the inhabitants thereof have voted in Tennessee, that process both criminal and civil from the courts of Tennessee have been executed upon said lands, that the United States Government many years ago located a postoffice in the territory in question and that the postoffice in question was designated by the postal authorities as being in Tennessee, that crimes committed against the Federal Government on the land in question have been tried in the Federal Courts in the State of Tennessee, and likewise, that the State of Arkansas, the complainant, has never undertaken to assess said lands for taxes nor to collect taxes off the same, that the citi-

zens and inhabitants thereof have never voted or performed other acts indicative of citizenship in the State of Arkansas and in addition thereto, although all of the lands lying within the State of Arkansas were surveyed and patented to various parties by the United States Government, the lands in controversy have never been surveyed by the Federal Government as a part of the State of Arkansas nor was there ever any effort made to dispose of said lands under the authority of the State of Arkansas, at least not until so short a time prior to the filing of the bill in this case as to be without evidentiary value.

Answering Count 2, the defendant, State of Tennessee, says:

That at all times that body of land known as Islands Nos. 26 and 27 in the Mississippi River (both of said islands now constituting one island) have been a portion of Tennessee and that the major portion of the lands thereon were disposed of by grant either by the State of North Carolina or by the State of Tennessee many years ago, in fact, the major portion of the lands upon said island were granted prior to the admission of the complainant into the Union of States. This defendant avers that in 1836 at the time of the admission of the complainant into the Union and prior thereto, the thread of navigation or main channel of the Mississippi River around Islands Nos. 26 and 27 ran west of said islands, that a narrow chute separated said islands from the Ten-

nessee mainland, that this chute was impassable for boats except at extreme high water and that the boundary line between the States of Tennessee and Arkansas lay west of said islands.

Prior to the year 1912 the Mississippi River west of Islands Nos. 26 and 27 through natural causes had shifted westward until the thread of navigation of said river lay far to the west of the original territories embraced in said island. In 1912, the then shoreline of the Arkansas shore opposite Islands Nos. 26 and 27 lay more than a mile west of the Arkansas bank of said river as the same existed in 1843 and in fact, during said years the action of the river consisted of an erosion from the Arkansas bank of said river with a consequent accretion to the western shore of Islands Nos. 26 and 27 or the Tennessee bank of the main channel of said river and this defendant avers that prior to 1912, as a result of accretions, a substantial body of land had attached itself to the Tennessee shore of the main channel of the Mississippi River on the western side of Islands Nos. 26 and 27 and that such body of land embraces the major portion of the lands in controversy claimed by the complainant in this suit. In fact, a substantial portion of the lands claimed by the complainant being virtually all of the disputed territory as shown on Exhibit 3 to the bill, except Tellier's Island, were granted by the State of Tennessee in 1890, at which time such lands were attached to and formed

a part of the Tennessee shore of Islands Nos. 26 and 27 and lay eastward of the thread of navigation between Tennessee and Arkansas at such time; and the grantees of the State of Tennessee immediately went into possession of said lands and began to cultivate the same and to improve them and for fully ten years prior to 1912, the date at which the thread of navigation of the Mississippi River opposite Island No. 26 changed from the west side thereof to the east side, the grantees of such lands from the State of Tennessee cultivated the same, cut timber therefrom and performed such other acts of possession and ownership as the lands were susceptible of under the circumstances.

At some time prior to the year 1912, the exact date being immaterial in the opinion of this defendant, the flow of the current of the Mississippi River to the west of Island No. 26 became partially diverted and a substantial portion thereof began to flow east of said islands through what was then known as the Tennessee Chute. The normal and natural effect of this increased flow of water east of these islands was to both widen and deepen the channel between these islands and the mainland of Tennessee and this continued up until about the year 1912, at which time the two channels of the river, the one east of Islands Nos. 26 and 27 and the one west thereof, were substantially of the same width and water capacity.

During the months of March and April, 1912, the Mississippi River south of the mouth of the Ohio River at Cairo was visited with an extremely high stage of water, in fact, the flood of 1912 was among the great floods on the Mississippi River of which any record exists and after the recession of the waters of this flood the channel east of Islands Nos. 26 and 27 was found by the United States Government to be safe for the passage of boats and it became at that point one of the two principal channels of the river. A photostatic copy of a survey made by the United States Corps of Engineers in October, 1912, is hereto attached as Exhibit 1 to this answer and cross-bill but the same need not be copied in this process but this defendant avers that such exhibit shows with a high degree of accuracy the physical status of the lands in question, as well as the two channels of the Mississippi River immediately following such change in channel. Following the change of the principal flow of the waters of the Mississippi River east of Islands Nos. 26 and 27, the old channel to the west of said islands remained for several years thereafter thoroughly passable for navigation at ordinary stages of water and the proper authorities of the United States Government maintained navigation lights around the west channel of the Mississippi River for upwards of three years next after the change of the flow of water therefrom. However, while it was true that this

change was imperceptible in the sense that there was no sudden cutting of a new channel for itself by the Mississippi River, the State of Tennessee avers that at no time did the waters of the Mississippi River in making this change flow over and erode away the lands intervening between the west channel of the river opposite Islands Nos. 26 and 27 and the east channel and that the boundary lines between said States at this point did not follow the change of channels of the river but upon the contrary, remained at the thread of navigation of the west channel of the river as the same existed subject to the erosion and accretion in said west channel.

As above stated, this defendant avers that so long as the west channel of the Mississippi River opposite Islands Nos. 26 and 27 remain navigable at ordinary stages of water, the thread of navigation of such channel at all times lay west of what is designated as Tellier's Island upon plaintiff's Exhibit 3 and that when the same became impassable for navigation, the boundary line between the two States became absolutely fixed in the channel north and west of what is known as Tellier's Island and it avers that the lands claimed by the complainant and in controversy in this suit lay far east and south of such thread of navigation as it last existed and that the lands in controversy as early as 1912 were physically attached to Islands Nos. 26 and 27 while at the same

time they were separated from the Arkansas shore by a substantial body of water.

This defendant especially denies that the doctrine of reliction is applicable to the case at bar and denies that the complainant is entitled to be decreed to be the owner of all lands west of its shore line of 1843 but it insists that the true boundary line between the two states at this point lies in the channel north and west of Tellier's Island and west of that portion of Exhibit 3 to the complainant's bill which is designated as "Sand bars built by floods of 1912 and 1913."

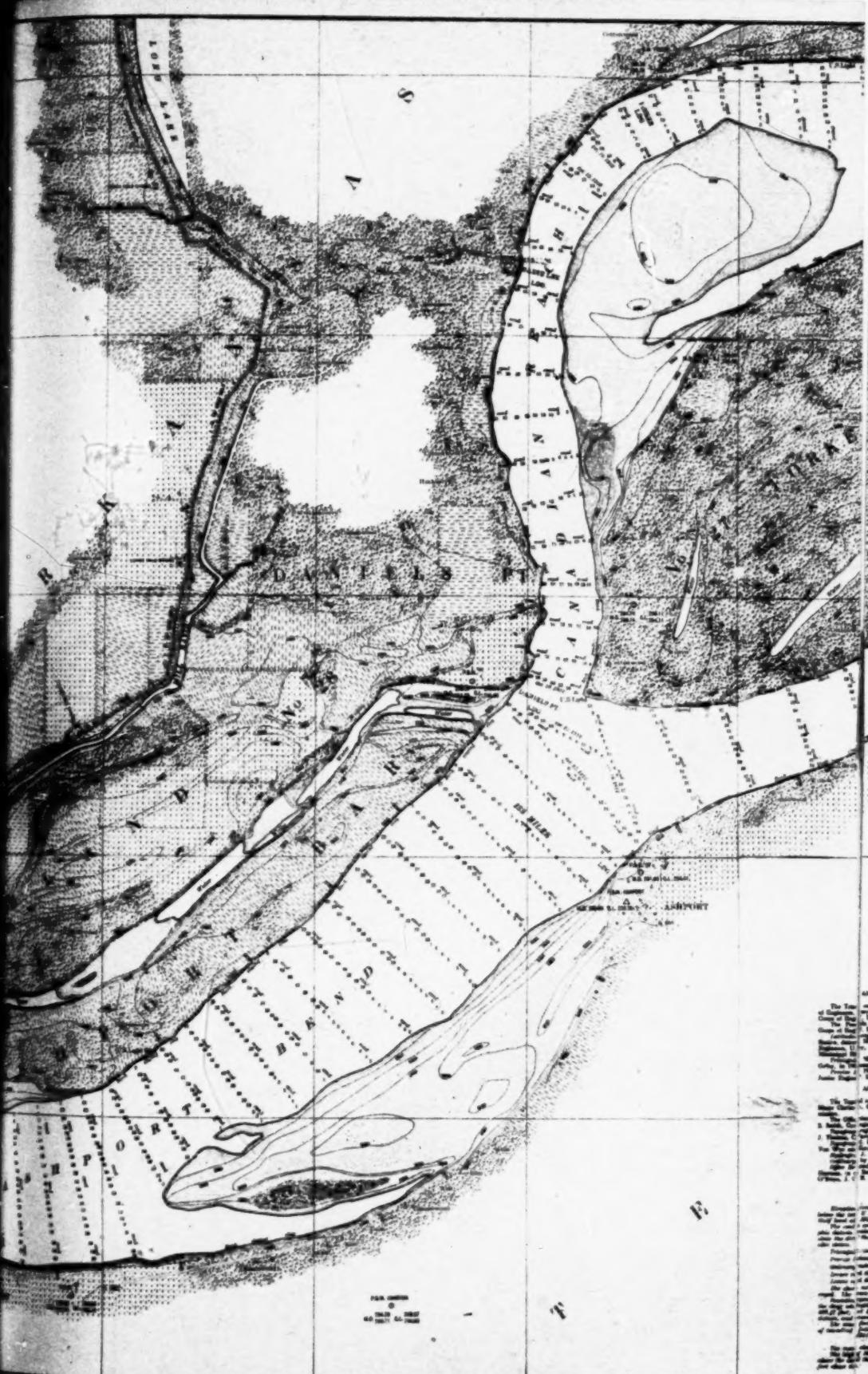
Now having fully answered, it assumes the role of cross-complainant and reiterating the averments of its answer herein, it prays that this Court decree that it be entitled to jurisdiction over the lands in controversy in this suit and for such other, further and general relief that it may be entitled to receive under the facts of the case.

STATE OF TENNESSEE,
Defendant and Cross-Complainant

Roy H. BEELER,
Attorney General.

NAT TIPTON,
E. F. HUNT,
Assistant Attorneys General
of Counsel.

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SURVEY OF THE
MISSISSIPPI RIVER

MISSISSIPPI RIVER COMMISSION

1912-13

CHART NO. 13

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